

# **PLANNING (SCOTLAND) ACT 2019**

---

## **EXPLANATORY NOTES**

### **OVERVIEW OF THE ACT**

#### **PART 3 – DEVELOPMENT MANAGEMENT**

##### **Planning obligations**

###### ***Section 34: Planning obligations: financial agreements***

184. Section 34 of the Act amends section 75 of the 1997 Act to modify the description of a planning obligation.
185. Subsection (2) broadens the scope of what a planning obligation can comprise.
186. Subsection (2)(b) inserts a new subsection (1A) into section 75 of the 1997 Act which defines a planning obligation so that it can be an obligation which restricts or regulates the use of land, and can also be an obligation which requires the payment of a specified amount or periodical sums. This is not a brand new provision, but represents a reframing of the existing provisions; new subsection (1A) replaces text removed by subsection (2) (a) of the Act.
187. Subsection (2)(d)(i) inserts paragraph (aa) into section 75(3) of the 1997 Act and so retains the current flexibility which allows planning obligations to be imposed either permanently or during such a period as is specified in the relevant instrument.
188. The remaining provisions of section 34 of the Act reflect the restructuring of the section.
189. The effect of these changes is to alter the definition of a planning obligation so as to include the restriction or regulation of the development or the use of land, **and** the requirement for the payment of a specified amount or periodical sums. The existing section 75 allows for such payments, but only as part of an obligation which also restricted or regulated the development or use of land.

###### ***Section 35: Planning obligations: publication***

190. Section 35(2) inserts a new subsection (4A) into section 75 of the 1997 Act, which requires the planning authority to publish a planning obligation in such a manner as they consider sufficient to ensure it is brought to the attention of residents of the area or district to which it relates. Section 35(3) inserts a new subsection (5A) into section 75A of the 1997 Act, requiring similar publication of any agreement or determination modifying or discharging a planning obligation.

###### ***Section 36: Planning obligations: annual report***

191. Section 36(2) introduces new subsections (5) and (6) into section 36 of the 1997 Act (registers of applications etc.). These require a planning authority to publish an annual report on planning obligations that have either been entered into in that year, or were entered into in a previous year and have not yet expired or have not been complied with.

The report must include the development to which each planning obligation relates and the name of the person who has entered into the obligation.

***Section 37: Planning obligations: modification or discharge***

192. Section 37 of the Act amends the provisions of sections 75A and 75B of the 1997 Act which relate to the modification or discharge of a planning obligation. Section 75A of the 1997 Act currently provides that a person against whom a planning obligation is enforceable may apply to the planning authority to have the obligation modified or discharged. The planning authority may determine that the obligation is to continue without modification, is to be discharged, or is to have effect subject to the modifications specified in the application. Section 75B of the 1997 Act provides that the applicant may appeal to the Scottish Ministers if the planning authority determine that the obligation is to continue without modification, or fail to give notice of their determination of the case within the time specified. The Scottish Ministers have the same options for determining the appeal as the planning authority have for determining the original application.
193. Section 37(4)(a) of the Act amends section 75A to provide that a modification or discharge of a planning obligation may be made either by means of an application under section 75A or following an appeal to the Scottish Ministers, or by a simple agreement between the planning authority and the person or persons against whom the obligation is enforceable. The remainder of section 75A applies only to a modification or discharge made by a formal application under subsection (2).
194. Section 37(4)(c) of the Act repeals section 75A(3) of the 1997 Act and so removes the restriction that modifications cannot impose an obligation on a non-applicant. This is, however, made subject to protections included by section 37(4)(e) of the Act, for a modification or discharge made following an application under subsection (2). Specifically, new subsection (4B) of section 75A of the 1997 Act requires the consent of any non-applicant to the imposition of any increased burden on them. Section 37(4)(f) of the Act ensures that non-applicants against whom the planning obligation is enforceable will be notified of the decision.
195. Section 37(4)(e) of the Act also inserts new subsections (4A) to (4C) into section 75A of the 1997 Act. Together with the amendment to subsection (4)(c) (made by section 37(4)(d) of the Act), new subsection (4A) enables the planning authority to propose an alternative modification that was not expressed in the applicant's original application. However, the planning authority cannot make such a change without the applicant's consent. Similarly, if the planning authority consider it appropriate to discharge the planning obligation but the applicant did not request that, the planning authority cannot discharge it without the applicant's consent. In terms of new subsection (4C), if an application seeks to modify more than one planning obligation, the planning authority can decide on each obligation separately.
196. Section 37(5) of the Act makes comparable changes to section 75B (appeals) of the 1997 Act to reflect the changes to section 75A. In particular, subsections (5)(a) and (b) amend section 75B(4) of the 1997 Act and insert new subsections (4A) to (4C), so that the Scottish Ministers also have the full range of options available to them: granting the application, rejecting it, or proposing an alternative outcome (subject, in that instance, to the agreement of the applicant). Changes made by subsection (5)(c) of the Act expand the notification requirements to provide for any non-applicant against whom the obligation is enforceable to be notified of the outcome.
197. Sections 37(2), (3) and (4)(g) and (h) make minor or consequential modifications as a result of the changes set out above.